

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. Nos. 03-16-90034, 03-16-90035, 03-16-90036

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

MEMORANDUM OPINION

(Filed: July 28, 2016)

PRESENT: McKEE, Chief Judge.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States District Judge (“Subject Judge I”) and two United States Magistrate Judges (“Subject Judge II” and “Subject Judge III”). For the reasons discussed below, the complaint will be dismissed.

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, after review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. §§ 352(b)(1)(A)(i)-(iii).

In February 2015, Complainant filed a pro se civil rights complaint naming a state court, a county court, law firms, lawyers, and insurance companies, alleging constitutional violations stemming from a state court insurance proceeding concerning coverage for a car accident. The matter was assigned to Subject Judge I and Subject Judge II; it later was reassigned from Subject Judge II to Subject Judge III.

The defendants filed motions to dismiss the complaint. Complainant moved several times for entry of a default judgment against the court defendants, arguing they had failed to timely respond to the Complaint. Subject Judges II and III issued orders denying the motions the grounds that the court defendants had been granted an extension of time in which to respond. Complainant also filed motions for sanctions against the private defendants, contending they had filed “frivolous pleadings.” In December 2015, Subject Judge I issued a memorandum opinion and order dismissing the complaint with prejudice, denying the sanctions motions, and closing the case. Complainant did not appeal.

In this complaint of judicial misconduct, Complainant recounts the procedural histories of the state court insurance proceeding and the federal civil rights complaint. With regard to the civil rights matter, Complainant argues that Subject Judges I, II, and III committed legal error because a default judgment should have been entered against the defendants. For instance, Complainant alleges Subject Judge II “wrote an[] unlawful order wit [*sic*] hand written to deny the Plaintiff’s default request” and, similarly, that Subject Judge III later “wrote another unlawful order . . . that stated motion for default

denied without prejudice. . . .” In addition, Complainant repeatedly alleges that judgment was entered in his case on May 18, 2015. He therefore contends that the “litigation was over” after that date and that, when the District Court Clerk’s Office advised him otherwise, “that was a lie.” Complainant also refers to submissions by the parties and orders of the court issued after that date as “nonsense” and “games.” Complainant concludes by alleging that the Subject Judges “should respect the law, they should not corrupt the Plaintiff by depriving his constitutional rights for their personal gains” and that “[t]he three Judges acted in an unethical manner. . . .”

It is readily apparent that Complainant’s allegations are intended to challenge decisions and rulings by the Subject Judges, including orders by Subject Judge II and III declining to enter a default judgment. Clearly, these are merits-related allegations. See Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.”). Merits-related allegations do not constitute cognizable misconduct. Accordingly, these allegations are subject to dismissal. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules 3(h)(3)(A), 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

With regard to Complainant’s allegations premised upon his belief that judgment was entered in his case on May 18, 2015, Complainant is simply mistaken. A review of the exhibits to Complainant’s complaint and the District Court’s docket confirms that no judgment (or, indeed, any court order) was entered on May 18, 2015. Rather, Subject

Judge I issued judgment on December 29, 2015. Accordingly, in addition to being merits-related, all allegations relating to this mistake of fact are also subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred.¹ 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Finally, when considered apart from the merits-related allegations, Complainant's allegations of corruption and unethical behavior are entirely lacking in evidentiary support. The record provides nothing to substantiate a claim of judicial misconduct on the part of any of the three Subject Judges. Accordingly, Complainant's remaining allegations are subject to dismissal as frivolous and unsupported by evidence that would raise an inference that misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Based on the foregoing, the complaint is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

s/ Theodore A. McKee
Chief Judge

¹ To the extent Complainant alleges wrongdoing on the part of Clerk's Office employees for "lying" about the date on which judgment was entered, I note that Clerk's Office employees are not judges and therefore are not covered by the Judicial Conduct and Disability Act. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

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ORDER

(Filed: July 28, 2016)

PRESENT: McKEE, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaint brought pursuant to 28 U.S.C. § 351 is hereby dismissed under 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

This order constitutes a final order under 28 U.S.C. § 352(c). Complainant is notified in accordance with Rules 11(g)(3) and 18, Rules for Judicial-Conduct and Judicial-Disability Proceedings, of the right to appeal this decision by the following procedure:

Rule 18(a) Petition. A complainant or subject judge may petition the Judicial Council of the Third Circuit for review.

Rule 18(b) Time. A petition for review must be filed in the Office of the Circuit Executive within **42 days** after the date of the chief judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive, and in an envelope marked "Misconduct Petition" or "Disability

Petition.” The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with “I hereby petition the judicial council for review of . . .” and state the reasons why the petition should be granted. It must be signed. There is no need to enclose a copy of the original complaint.

The full text of the Rules for Judicial-Conduct and Judicial-Disability Proceedings is available from the Office of the Circuit Executive and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

s/ Theodore A. McKee
Chief Judge

Dated: July 28, 2016